

ST 01-0135-GIL 07/27/2001 MANUFACTURING MACHINERY & EQUIPMENT

Machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.330. (This is a GIL).

July 27, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 4, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I would like some information regarding restaurants and caterers operating in the state of Illinois.

'What can a Restaurant Buy Tax Free?' What I am referring to are the items used by restaurants and caterers in the manufacturing (preparation) process. Is a restaurant considered a manufacturer? Can they claim an exemption from state and local taxes when purchasing such items as:

Kitchen equipment used to cook, mix, chop or blend food or beverages for sale.

- a. Bread machines, char broilers, coffee makers, deep fat fryers, drink machines that mix or freeze the ingredients, electric slicers, peelers, electric kettles, griddles, grills, juicers, microwave ovens, toasters, food processors, etc..
- b. Baking pan, bun pan liner, colander, mixing bowls, pans, pizza tray, pots, food tray (used to absorb grease), skillet, and soup crock.
- c. Butane fuel, charcoal, lava rock and propane.

Wrapping and packaging items, including 'to-go' items:

Styrofoam containers, doggie bags, doilies, plastic or Styrofoam cups and lids, plastic or Styrofoam plates, foil pans & lids, toothpicks, utensils & wet-naps and straws.

One time use items such as: plastic bibs, soufflé cups & lids, disposable table covers, catering tray (given to customer) and wrapping paper.

Items used for quality control:

Scales, thermometers, measuring cups and spoons, timers.

Items used for health and safety issues:

Disposable apron, back support belt, grease filter, rubber gloves, plastic gloves, safety goggles, hand guard gloves, hair nets, safety mat.

And then of course the food and drink items that are tax-exempt.

Is there a web site or a publication or brochure that will provide me with this detailed information? Please mail any information available to the address noted above. I would greatly appreciate any and all assistance you can provide. I look forward to your response.

DEPARTMENT'S RESPONSE:

MANUFACTURING MACHINERY & EQUIPMENT

Machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant. See Section 130.330.

Please note that the machinery or equipment must be used by the purchaser primarily (over 50% of the time) in manufacturing or assembly and that manufacturing and assembly does not include the preparation of food and beverages by restaurants, food service establishments, caterers, and other retailers. See Section 130.330(b)(7). Likewise, items used in the preparation of food and beverages by such retailers, such as scales, thermometers, and measuring devices etc. along with wearing apparel (even for safety or sanitation purposes) do not qualify for the exemption.

PACKAGING

Effective August 1, 1997, nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. Examples of such items include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials

that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages. See subsection (b)(3) of the enclosed copy of 86 Ill. Adm. Code 130.2070. Such items do not include items which are used by the food vendor in conducting his business (including catering etc.) and which are not transferred to the customer, including, but not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles. Those items are considered used by the retailer or caterer and are subject to tax.

FOOD AND DRINKS

We have enclosed a copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or the general (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. Sales of food and beverages by restaurants and caterers are generally always subject to the general rate of tax plus any applicable local taxes.

When an Illinois registered seller makes a sale in Illinois, it must either charge tax or document an exemption. To purchase items of tangible personal property tax free for the purpose of resale, purchasers should submit properly completed Certificates of Resale to the sellers. In order for a Certificate of Resale to be valid in Illinois, it must contain the items of information set out in subsection (b) of the enclosed copy of 86 Ill. Adm. Code 130.1405.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.